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VIA ELECTRONIC MAIL

Attn: Jennifer Sincock
Office of Water Docket
U.S. Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

**RE: Notice of Availability of the Draft TMDL and Request for Public
Review and Comment on the Draft TMDL (Docket ID No. EPA-R03-
OW-2010-0736)**

Dear Ms. Sincock:

These comments are submitted by the US Poultry & Egg Association (USPOULTRY), the National Turkey Federation (NTF) and the National Chicken Council (NCC) in response to EPA's proposed Chesapeake Bay TMDL.

The U.S. Poultry & Egg Association, the National Turkey Federation and the National Chicken Council respectfully request that EPA extend the comment period deadline on the proposed Chesapeake Bay TMDL to 120 days, in light of the scope, complexity and potentially severe impacts of the proposal on family farms and poultry processing operations.

I. INDUSTRY OVERVIEW AND IMPACTS

The **U.S. Poultry & Egg Association** is the world's largest poultry organization, whose membership includes producers of broilers, turkeys, ducks, eggs and breeding stock, as well as allied companies. The Association focuses on research, education and technical services, as well as communications to keep members of the poultry industry current on important issues.

The **National Turkey Federation** is the national advocate for all segments of the turkey industry. NTF provides services and conducts activities which increase demand for its members' products by protecting and enhancing their ability to profitably provide wholesome, high-quality, nutritious products.

The **National Chicken Council** is a nonprofit member organization representing companies that produce and process over 95 percent of the broiler/fryer chickens marketed in the United States. NCC promotes the production, marketing and consumption of safe, wholesome and nutritious chicken products both domestically and internationally. NCC serves as an advocate on behalf of its members with regard to the development and implementation of federal and state programs and regulations that affect the chicken industry.

The poultry industry has taken significant steps in recent years to advance nutrient management practices and minimize water quality impacts in the Chesapeake Bay watershed. Under the proposed TMDL, however, thousands of family farms, as well as already heavily-regulated processing operations with stringent permit limitations for nitrogen and phosphorus, could face what may be costly and scientifically unsupportable nutrient reduction mandates.

The proposal also sets important legal precedents for the use of EPA's authority in other regions of the nation where family farms and processors are located. As a consequence, the entire U.S. industry and we as trade associations have a direct interest in this rulemaking.

II. EPA ACTION FAILS TO PROVIDE MEANINGFUL COMMENT OPPORTUNITY

The agency's proposed action, including the expansive data universe and input assumptions on which it is based, is the most ambitious TMDL initiative ever undertaken by the agency. The proposal covers multiple state and local jurisdictions, relies on extremely complex methodologies, impacts a wide range of small to large businesses and treatment operations, and will affect tens of millions of citizens.

Under basic principles of due process and administrative law, EPA has an obligation to provide the public with a reasonable opportunity to comment on proposed agency actions. Specifically, Congress required EPA to give the public "a reasonable period...of at least 30 days" in which to comment on any regulation promulgated under key federal environmental statutes. Congress has indicated that 30 days is the minimum time necessary to give the public a reasonable opportunity to evaluate a proposed rule and provide adequate feedback to the agency. A comment period meeting the 30-day statutory minimum would be reasonable for a single, ordinary proposed rule.

However, EPA has allowed only 45 days for one of the most significant, precedent setting and complex TMDLs in the agency's history. Forty-five days – only 15 days longer than the statutory minimum – is an unreasonably short period of time for comment on EPA's proposed Chesapeake Bay TMDL. For example, merely evaluating the Scenario Builder input assumptions to the Bay model, among other elements of appropriate analytical review, is a significant exercise in itself for the industry. A comment period of only 45 days deprives affected parties a means to adequately assess the proposal's potential impacts and to protect their interests in the administrative process.

Moreover, a 45-day comment period is especially inadequate given the complexity, breadth and potential economic impacts of the proposed TMDL. Providing a meaningful analysis of the proposal is also a time-consuming process. Although the industry already raised

several preliminary technical concerns with EPA in recent months related to the Scenario Builder as part of the Bay modeling effort, we are troubled that some of these concerns may not likely be able to be addressed by EPA in time for even the final TMDL rule.

III. INDUSTRY REQUEST FOR INFORMATION AND DOCUMENTATION

To provide meaningful comment on the TMDL proposal, the industry requests EPA to provide a copy of Scenario Builder in order to test whether EPA is applying appropriate assumptions to “real world” land uses and nutrient management activities in the industry.

The industry also requests documentation regarding the peer review that was done for Scenario Builder. Scenario Builder plays a fundamental technical role in informing the reduction targets and other elements of the TMDL process, and should have been peer reviewed. In light of the fact that the latest version of Scenario Builder was just recently completed, the public interest - including the interest of potentially severely affected stakeholders - demands that this crucial “building block” behind the proposed TMDL receives proper technical evaluation prior to the agency’s final action.

In sum, we do not believe a mere 45 days to review the new proposal and offer recommendations for revisions constitute a meaningful opportunity to comment on such an expansive initiative.

We appreciate your attention to this request and your prompt action to extend the comment deadline. If you have any questions, please contact Paul Bredwell at U.S. Poultry & Egg Association at pbredwell@poultryegg.org.